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14 **IN THE UNITED STATES DISTRICT COURT**  
15 **FOR THE DISTRICT OF ARIZONA**

16 UNITED FOOD & COMMERCIAL  
17 WORKERS LOCAL 99, et al.,

18 Plaintiffs,

19 v.

20 JAN BREWER, in her official capacity  
21 as Governor of the State of Arizona, et  
22 al.,

23 Defendants.

Case No: 2:11-cv-921-PHX-GMS

**DEFENDANT SHERIFF ARPAIO'S  
REPLY IN SUPPORT DEFENDANTS'  
MOTION TO DISMISS  
INTERVENORS' COMPLAINT**

24 Defendant Sheriff Arpaio respectfully submits this Reply in Support of his  
25 Motion to Dismiss Intervenor's Complaint. Sheriff Arpaio also joins in the State  
26 Defendants' anticipated Reply to be filed in the next few days.

27 The Declaration of Don Carr (Doc 86-1), in part, clearly demonstrates the  
28 redressability and ripeness defects in Intervenor's Complaint. In paragraph 18 of his  
Declaration, Mr. Carr reveals that the only picketing activity that SEIU Arizona is  
currently considering is to picket "a private employer, Pima Council on Aging for All,  
Inc., to inform the public about a labor dispute." (Doc 86-1 at 6.) This Court may take  
judicial notice of the fact that this entity, as its name suggests, is located in Pima County  
(specifically Tucson), far outside of Sheriff Arpaio's jurisdiction.

1 SEIU Arizona does not dispute that Sheriff Arpaio's MCSO is unlikely to be the  
2 responding police agency to any of SEIU Arizona's activities. He has no authority  
3 outside of Maricopa County. And within the City of Phoenix, where SEIU Arizona  
4 implies that most of the allegedly chilled activity will occur, the City of Phoenix Police  
5 Department would most likely be the responding police agency. No other police agency  
6 in the state (except possibly DPS via the State Defendants) is a party to this case.  
7 Ultimately, because SEIU Arizona has failed to join in all police agencies in the State,  
8 the injunction it seeks will not redress its alleged injuries. SEIU Arizona too quickly  
9 glosses over this reality by attempting to have the Court focus instead on SEIU  
10 Arizona's general and subjective fears of prosecution and chilled speech. But the  
11 inescapable reality is that the tacitly conceded unlikely role by Sheriff Arpaio in any  
12 arrest or prosecution is, in large part, also why these subjective fears are not "well  
13 founded" and why SEIU Arizona's allegations of a subjective 'chill' are similarly  
14 inadequate to show an injury in fact. *See Laird v. Tatum*, 408 U.S. 1, 13-14 (1972)  
15 ("Allegations of a subjective 'chill' are not an adequate substitute for a claim of specific  
16 present objective harm or a threat of specific future harm."); *Cal. Pro-Life Council, Inc.*  
17 *v. Getman*, 328 F.3d 1088, 1095 (9th Cir. 2003) (quoting *Virginia v. Am. Booksellers*  
18 *Ass'n*, 484 U.S. 383, 393 (1988)) ("The potential plaintiff must have 'an actual and well-  
19 founded fear that the law will be enforced against [him or her]' [and] such a fear of  
20 prosecution will only inure if the plaintiff's intended speech arguably falls within the  
21 statute's reach.").

22 SEIU Arizona's reliance on *Los Angeles County Bar Ass'n v. Eu*, 979 F.2d 697,  
23 701 (9th Cir. 1992) in support of its standing argument is misplaced. That court found  
24 standing because if it were "to rule in [plaintiff's] favor, it [was] likely that the alleged  
25 injury would be to some extent ameliorated." *Id.* In that case, the County Bar  
26 Association brought a constitutional challenge on a California statute prescribing the  
27 number of judges on the superior court for Los Angeles County, alleging a violation of  
28 due process and equal protection. *Id.* Any change in the number of judges was

1 guaranteed to have a direct impact. *Id.* But here, SEIU Arizona cannot demonstrate that  
2 an injunction against Sheriff Arpaio is likely to have any impact. Except in the few  
3 Maricopa County islands, where it is extremely unlikely for SEIU Arizona to engage in  
4 any picketing activity, Sheriff Arpaio shares law enforcement responsibilities with  
5 various city police departments. Therefore, even if Sheriff Arpaio were enjoined to take  
6 any action, SEIU Arizona would still have the same general and subjective fears of  
7 prosecution and chilled speech by other law enforcement agencies. Further, granting  
8 SEIU Arizona's requested injunction against Sheriff Arpaio and not against any of the  
9 other county and city law enforcement agencies in the State would create an impractical  
10 and silly checkerboard result of different law enforcement agencies in Maricopa County  
11 with different powers under the same statute.

12 SEIU Arizona does not have standing. It cannot demonstrate an injury in fact. It  
13 failed to show that its claims are redressable against Sheriff Arpaio, and its claims are  
14 not presently ripe for review. Accordingly, the Complaint in Intervention for Injunctive  
15 and Declaratory Relief (Doc. 52) should be dismissed.

16 RESPECTFULLY SUBMITTED this 15th day of September 2011.

17 WILLIAM G. MONTGOMERY  
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CERTIFICATE OF SERVICE

I certify that I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following this 15th day of September 2011 to:

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